# United States Department of Labor
# Employees' Compensation Appeals Board

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| **L.R., Appellant** | ) | |
| | ) | **Docket No. 16-0446** |
| **and** | ) | **Issued: April 14, 2016** |
| **DEPARTMENT OF THE INTERIOR, ASSATEAGUE ISLAND NATIONAL SEASHORE, Berlin, MD, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On January 11, 2016 appellant filed a timely appeal from September 8 and December 22, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish a left knee injury causally related to a July 10, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On July 22, 2015 appellant, then a 71-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2015 he twisted his left knee as he exited a tall trash truck at work. He stopped work on July 13, 2015.

By letter dated August 4, 2015, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit factual and medical evidence. It also requested that the employing establishment submit medical evidence if appellant had been treated at its medical facility.

OWCP received an August 7, 2015 letter in which Kathleen Herath, a registered nurse, requested that Dr. Edward J. McGinnis, appellant's attending Board-certified orthopedic surgeon, complete several attached medical form reports. In an August 10, 2015 continuation of pay (COP) nurse report, Ms. Herath indicated that appellant stopped work on July 13, 2015 pending irrigation and debridement of his left knee on July 15, 2015. She noted that he was currently on a six-week course of antibiotics due to a severe left knee infection and admitted to a rehabilitation center.

In a September 8, 2015 decision, OWCP denied appellant's claim, finding that he had not provided a factual basis for his claim and that there was no medical evidence to establish that a diagnosed medical condition was causally related to the July 10, 2015 incident.

On October 2, 2015 appellant requested reconsideration. In an August 14, 2015 response to OWCP's August 4, 2015 developmental letter and a September 29, 2015 statement, appellant further described the July 10, 2015 incident. He stated that, while collecting trash at work, his foot slipped and he stumbled as he entered a tall trash truck, twisting his left knee. Appellant continued to drive the truck with a painful knee. When he arrived home that same day, he put ice on his swollen knee. During the weekend of July 10, 2015, appellant treated his increased swelling with ice. On Monday, July 13, 2015 his left knee locked and he was unable to get down from a trash truck without help. A park emergency medical technician evaluated appellant's knee and recommended that he go to a hospital. Appellant was taken to Atlantic General Hospital by a coworker and was later transported to Peninsula Regional Medical Center. He underwent surgery and blood test results revealed a serious infection in his left knee. As of August 14, 2015, appellant was in a rehabilitation facility. He noted that his current injured knee was replaced in early 2015, but he was cleared for work by an attending physician.

In an undated letter, a coworker stated that on July 10, 2015 he witnessed appellant wincing in pain each time he used what appellant previously referred to as his bad knee, as they worked alongside each other while performing refuse collection in a trash truck. He related that appellant must have reinjured his knee by twisting it the wrong way.

An unsigned discharge summary report dated July 18, 2015 from Peninsula Regional Medical Center contained the printed name of Robert S. Becker, a certified physician assistant, dictating for Dr. Florian G. Huber, a Board-certified orthopedic surgeon. The report noted that it was a draft until authenticated by Mr. Becker and Dr. Huber. The report revealed that appellant underwent a left total knee replacement in March 2015. On July 14, 2015 an incision,

debridement irrigation, and a poly exchange of the left total knee were performed by Dr. McGinnis. Laboratory test results revealed a staph epidermatitis culture. Appellant's discharge condition was stable.

In a decision dated December 22, 2015, OWCP affirmed the September 8, 2015 decision, as modified. It found that appellant had established that the July 10, 2015 incident occurred as alleged, but he had not established that a medical condition was diagnosed in connection with the established employment incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish a causal relationship.[9]

[2] *Supra* note 1.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused by the July 10, 2015 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had a left knee injury causally related to the accepted employment incident.

The unsigned July 18, 2015 discharge summary report which contained the printed name of Mr. Becker, a certified physician assistant, who was dictating for Dr. Huber, has no probative medical value in establishing that appellant sustained a left knee injury causally related to the accepted July 10, 2015 employment incident. The report indicated that it was a draft until authenticated by Mr. Becker and Dr. Huber. There is no evidence, however, that Dr. Huber signed or authenticated the July 18, 2015 report. The Board has also held that physician assistants are not considered physicians as defined under FECA.[10] Therefore, the medical treatment note of Mr. Becker lacks probative value on the issue of causation.

Similarly, the August 7, 2015 letter and August 10, 2015 COP nurse report from Ms. Herath, a registered nurse, are insufficient to establish appellant's claim. This evidence is of no probative value as registered nurses are not considered physicians as defined under FECA.[11]

Appellant has not submitted medical evidence from a physician explaining how the July 10, 2015 work incident caused or contributed to a left knee injury. Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a left knee injury causally related to the accepted July 10, 2015 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that appellant has failed to meet his burden of proof to establish a left knee injury causally related to a July 10, 2015 employment incident.

[10] Under FECA, the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8101(2); *see B.B.*, Docket No. 09-1858 (issued April 16, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[11] 5 U.S.C. § 8101(2); *see G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse had no probative medical value as a nurse is not a physician as defined under FECA).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 22 and September 8, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 14, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board